1903-0416 Chancery Causes: France Miles vs. Patrick Miles
Lee Co

CH-Contract Dispute
T-Property

To the Honorable H. A. W. Skeen Judge of the Circuit Court of Lee County Va.

Humbly complaining, your orator, France Miles would represent and show unto your honor that on the 15th day of november 1901, he was seized and possessed of a certain tract or parcel of land one-half mile East of Jonesville, and bounded on the East by the lands of A. C. Williams on South, by L. C. Roop, on West, by M. D. Richmond on north by D. C. Sewell Containg 70 acres - And that being so seized and possessed as aforesaid on the day aforesaid your orator contracted to sell said tract of land to one Patrick Miles for the sum of $450.00, Sixty five dollars of which was paid cash in hand, the residue to be paid in three equal installments, to be evidenced by the notes of the said Patrick Miles to be given Nov. 15th 1902. And payable in one two & three years from date, Your orator alleges that the aforesaid Contract of sale to Patrick Miles had a further condition or agreement in it, that if the said Patrick Miles on the 15th day of November 1902 should fail that he was not able, financially, to complete the aforesaid purchase, then in that event said contract should be deemed a rental contract, and the aforesaid $65.00 cash paid should be the rents for that year, Said contract is in writing and is held.

by R. C. Joslyn, Now yam orator further alleges that the said Patrick Miles went into the possession of the aforsaid land, but is declaring that he is not going to complete his purchase and the said Patrick Miles is committing waste on said lands by cutting, removing selling and destroying the timber on said lands, and thereby decreasing the value of said lands said timber is very valuable, and said lands are the only security yam orator has for his purchase money, Yam orator alleges that Patrick Miles is insolvent, and that he should be enjained, inhibited, and restrained from removing, cutting, and destroying the timber on said land until Yam orators purchase money is paid in full—
The object therefore of this bill is that the said Patrick Miles be made a party defendant to this bill and answer the same, but not on oath that being waived; and that the said Patrick Miles, his agents and employes be enjoined, inhibited and restrained from committing any further waste on said lands, by cutting, selling removing, and destroying the timber on the same, until yam orators purchase money is paid in full or properly secured, And yam orator prays for all other further and general relief as his

case may require or to equity seem meet
And he will ever pray etc

M. L. Ely. p.q.

Virginia Lee County to wit:
This day France Miles personally appeared before me ~~[illegible]~~ and made oath that the several allegations in the foregoing bill are true. Given under my hand, this 22nd day of Jan, 1902.

A B Munsey Clerk

Patrick Miles, his agents and employees are hereby enjoined from Cutting, removing and selling the timber from the land described in the bill or committing any waste on said land; but this order is not to be effective until the plaintiff, France Miles, or some one for him shall execute bond in the sum $100 before Lee county Circuit Court Clerk Conditioned as required by law. Jan. 24, 1902

To A. B. Munsey Clerk

H. A. C. Sleen. Judge of Lee county Circuit Court.

Frances Miles Pltff

Vs Bill in Chancery

Patrick Miles Deft.

1902. 1st February bill filed Spa Executed and answer filed.

" 2nd Feby rules Cause Set for hearing

To the Hon. H. A. L. Skeen, Judge of the Circuit Court for Lee County, Va.

The Answer of Patrick Miles to a bill of Complaint filed against him in Your Honor's said court at first Feb. Rules 1902.

The defendant reserving unto himself the benefit of all just exceptions which can be had or taken to the said bill of complaint for answer thereto, & unto so much thereof as this defendant is advised it is material or necessary for him to answer, answering says:

True it is that on the 15 day of Nov. 1901, the said complainant was seized and possessed of the tract or parcel of land in the said bill of complaint mentioned and described, and that on the said 16 day of Nov. 1901, there was a contract in writing made and signed between this defendant and said complainant concerning said land, in which this defendant was to pay said complainant the sum of $450 for said land, $65 of which was to be paid down, and which sum this defendant did then and there pay to said complainant; the residue was to be paid in three equal annual payments from Nov 15. 1902, and for which this defendant agreed to execute his notes for same on the 15 day of Nov 1902, with interest from that date, and payable in one two and three years therefrom. But this respondent denies that it was only a contract for the sale of said land, but on the contrary the said contract shows upon its face that it was an absolute sale upon the part of the complainant

to this defendant and immediate possession thereof was delivered to this respondent.

True this respondent retained the right in said contract if he felt at the end of one year that he could not pay the residue of the purchase price, that he should have the right to rescind said contract by delivering possion of same back to the said complainant.

But this was entirely at the option of this defendant, while the plaintiff has no right at all to demand the rescission of said contract.

True it is also that in the event that ~~said~~ this defendant should wish to cancel said contract at the end of one year from the date thereof, he was to pay said complainant for the use and damages of said land for said year; but it is not true that the $65.00 paid by this defendant was to be considered and treated as rent due on said land for said year; on the contrary the use and damages of said land was to be assessed by disinterested men, selected by said complainant and this defendant; and if they said that the use and damages of said land was worth more than the $65.00, then this respondent was to pay the excess, and should the use and damages be estimated to be less than the $65.00, then complainant was to pay the difference back to this defendant;

And your respondent is advised that the reservation made in said contract was for his benefit alone, and amounts in law to an agreement on the part of the complainant

to purchase said land back from this defendant; should this defendant ~~should~~ fail at the end of one year from ~~Dec~~ Nov. 15. 1901, that he wished to sell it to him, at the price of $450.00.

This respondent denies that he however declared, that he did not intend to complete said purchase, but on the contrary he is making every effort to complete the same and feels and believes that he will be able to pay every dollar of the purchase money as it becomes due.

This respondent denies that he is any more insolvent now than he was at the time he purchased said land, and his financial condition was then fully known to said complainant. The said complainant persuaded this defendant into making said purchase, assuring him that he could work out the amount necessary to pay for said land in the time which he would give him to make said payments.

This respondent denies further that he is committing any waste upon said land other than is necessary in its cultivation, that he has been clearing some of said land for the purpose of cultivating the same, as the cleared land is very poor and worn out: and from the timber cut in clearing said land this respondent has cut and sold a little fire wood. But he is advised that he has the right to do this, until he has at least made some breach upon his part of said contract

This defendant herewith files the contract made between him and the said complainant concerning said land, and so much of it at least as is in existence, as it was accidently partially destroyed by fire, while in the keepings of this defendant, and it is prayed to be treated as a part of this answer. Said contract is marked "1".

This defendant denies every allegation in said bill, which he has not specifically denied or admitted to be true.

And now having fully answered the complainants bill this respondent prays hence to be dismissed with his reasonable costs in this behalf expended, and he will ever pray etc.

W. O. Ballew } p.d.
J. C. Nord }

The whole of the within answer is excepted to:
Because it sets up no matter of legal or equitable defense whatever,

France Miles Plff.
By M. G. Ely atty,

Patrick Miles
vs
In Chancery
France Miles
Answer of Defendant
Filed Feb 4th 1902
D. M. Mowery Clerk

This agreement made and entered in
vember, 1901, by and between France Miles
ton Miles of the second part, WITNESSETH: th
the first part has this day sold unto the said
part a certain tract or parcel of land lying and being
of Lee and State of Virginia, about one mile east of Jone
ing a part of the same land which was conveyed to the said
by William Sullivan, supposed to contain about 70 ac
~~but the said second party being fearfu~~
~~will not be a~~, for which land the said second party agrees
sum of $450.00, paid down and secured to be paid. But the
party being fearful that he will not be able to pay for
is agreed between the parties that the said second par
immediate possession of said land, paying down to
sum of $65.00, and shall remain in possession of
riod of twelve months, at the end of which th
party f[illegible]that he cannot pay [illegible]id land
the possession of the same to the said first
as shall be assessed by disinterested parties,
amount to less than the said $65.00 paid to the s
said first party shall repay to the second party su
if said rent shall amount to more than the said $65.00 th
second party is to pay the additional sum to the first part
at the end of said period of twelve months the said second party
that he can pay for said land then he is to take the same, and th
$65.00 so paid when he takes posession, shall go as a payment
same and he is to execute thre[illegible]otes of equal amount paya
two and three years for the r
shall bear interst from date.
to make good and sefficient de
said second party of all the pu
part find hims[illegible]
vi[illegible]of

Exhibit ("I")

France Miles, Plaintiff,

Against) In chancery

Patrick Miles, Defendant,

This cause came on this day to be heard upon the bill of Complainant and exhibits therewith, the answer of the Defendant, and the deposition of the Complainant, and was argued by counsel.

On consideration of which it is adjudged, and decreed that the Plaintiff's injunction be perpetuated, and that the Defendant be forever inhibited and restrained from committing any waste on the lands described in said bill; and it is further decreed that the Plaintiff have a writ of possession for and against the Defendant writ for house not to issue for 90 days but immediate possession of writ for the lands and premises described in the bill, and proceedings, which are unlawfully withheld from him; and it is agreed that this cause be stricken from the docket, each party paying his own costs.

Said Marshal and Attorney

Pleffords
Clerk 5.00
Tax 1.50
Shff 0.50
7.38

France miles,
vs. } Decree Final.
Patrick miles.

Cert. C.B. 7. P. 215;

Enter This

March. 3rd 1903.

To Patrick miles

Take notice, that on the 23 day of Feb. 1903, at the Law office of W. F. Ely, in the town of Jonesville, Va., between the hours of 6 o'clock a. m. and 6 o'clock p. m. of that day, I shall proceed to take the depositions of France miles and others to be read in evidence in my behalf in the suit in equity depending in the Circuit Court of Lee County in which France miles is Plaintiff and Patrick miles is Defendant; and if from any cause the taking of said depositions be not commenced on that day, or if commenced, if they be not completed on that day, the taking of said depositions will be adjourned and continued from time to time and place to place until they are completed.

Feb. 20. 1903.

Respectfully,

France miles

By Counsel.

Duplicates of this blank for sale at $1.00 per hundred by C. M. Harris, Publisher "Post," Big Stone Gap, Va.

Executed Feb. 20th 1903 by delivering a true copy of the within notice to — miles wife of Patrick miles at his usual place of abode, and explaining to her the purport of the same she being a member of his family over the age of 16 yrs. the said Patrick miles not being found at his usual place of abode.

Wm Hall Sergent
of the town of Jonesville

Frances Miles
vs
Notice to take depositions
Patrick Miles

The deposition of France Miles taken before me, Geo.P.Cridlin, a notary public in and for the County of Lee and State of Virginia, at the office of M.G.Ely in the town of Jonesville, Va., on the 23rd day of February, 1903, pursuant to notice hereto attached, which deposition is intended to be read as evidence in behalf of the plaintiff in a certain suit in chancery now depending in the Circuit Court of Lee County, Va. in which France Miles is plaintiff and Patrick Miles is defendant.

Present, M.G.Ely, attorney for plaintiff; and,

H.O.Ballou attorney for defendant.

France Miles a witness of lawful age, being duly sworn deposes as follows:

Q.1.-- State your age, residence and occupation and whether or not you are plaintiff in this suit?

A.-- I am 56 years, reside at Jonesville, Va., my occupption is now that of constable, I am plaintiff in this suit.

Q.2.-- State whether or not Patrick Miles yet lives on your lands which are in controversy in this suit?

A.-- He does.

Q.3.-- When did his rental contract and option to purchase this land expire?

A.-- On the 15th day of November, 1903.

Q.4.-- Has he rented for another year?

A.-- He has not.

Q.5.-- Has he closed his option contract to buy, or has it been extended?

A.-- He has not closed said option, nor has it been extended.

Q.6.-- State whether or not, according to the terms of your original contract with Patrick Miles, you are now entitled to the possession of the said land. ans: Law.

And further this deponent saith not.

France Miles

Virginia, Lee County, to-wit:

I, Geo.P.Cridlin, a notary public in and for the County and State aforesiad, do certify that the foregoing deposition of France Miles, was taken , sworn to and subscribed before me at the time, place and for the purpose ⊠ in the caption mentioned.

Given under my hand this Feb. 23, 1903. Geo.P.Cridlin N.P.

France Miles

vs. } Dfts.

Patrick Miles

Notary fee 75 cts

Received from Geo. P. Gridlin the N.P. before whom taken and filed Feby 30th 1903.

A.B. Mumsey Clerk

Everett Waddey Co.,
Stationers and Printers,
Richmond, Va.
Form No. 300

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon Patrick Miles

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules to be held for the said Court, on the First Monday in February, 1902, to answer a bill in chancery, exhibited against him in our said Court for Frances Miles

And have then there this writ. Witness, A.B. Munsey, Clerk of our said Court, at the court-house, the 25 day of January, 1902, and in the 126th year of the Commonwealth.

A.B. Munsey, clerk

Virginia, Lee County, to wit:

The required bond having been given, the defendant, Patrick Miles, his agents and employees, are injoined and restrained from cutting, removing and selling timber from the land in the bill mentioned, or committing any waste thereon. Given under my hand this 25th day of January, 1902.

A. B. Mumsey, clerk

Form No. 300.

Isaac Miles

SUBPOENA IN CHANCERY.

vs.

Patrick Miles

M. G. Ely p. q.

To First Feby Rules, Circuit Court. 1902.

Returned Executed January 25- 1902. by delivering a true Copy of the within Summons to Patrick Miles. D. B. Bunn, D. S. L.